Workers’ Compensation Management Committee Quarterly Meeting

Thursday, March 9, 2020 at 1:30pm
Via WebEx – contact ltietz@montana.edu for access

MISSION

The self-funded workers’ compensation program will aggressively implement “best practices” in loss control and efficiently, expeditiously, and cost effectively handle workers’ compensation claims in the best interests of the program and the employee.

AGENDA

WELCOME & INTRODUCTIONS

1. Self-Introductions & Committee Updates
2. Call for any changes or additions to the Agenda
3. Approval of October 14, 2019 WC Committee 2nd Quarter Meeting Minutes as distributed with meeting materials prior to today’s meeting. (ACTION ITEM)

PUBLIC COMMENT

DIRECTOR’S REPORT & OLD BUSINESS

1. Business Update
   A. HR Directors’ Meeting
      i. Supervisor’s Basic Work Comp Guide-Developed by Tietz with significant and appreciated input from several claim coordinator. Tietz presented it to HR Directors in December.
      ii. Safety Responsibilities in Job Postings & Descriptions - Philips & Stahl presented draft language and urged campuses to implement inclusion of Safety Responsibilities in each job posting and job description.
      iii. Learning Management System (LMS) Discussion
   B. Actuary Report is finalized and attached with Meeting Materials distributed to Committee members
2. MUS, Work Comp & Committee
   A. Succession Planning – Campuses with WC Committee Representative terms expiring June 30, 2020 are Helena College, MSU Northern and MSU Billings
   B. WC Committee Development/Training (Tentative)
      i. Work Comp 201/ MUS Claims Process/Time Tracking-Spring 2020
      ii. EAP-Spring 2020
      iii. Litigated Claims Process – Summer 2020
      iv. Reading a Financial Audit & Actuary Analysis – Fall 2020
   C. MUS WC and emerging health concerns in the workplace
STRATEGIC PLAN DEVELOPMENTS

1. Review Strategic Plan Notes and Comments
2. Vision Development
3. Progress Report on Strategic Plan Goals
   A. Communication Plan – Michele, Therese, Terri, Brenda/Laurie, Chris
   B. Shared Resources - Chris, Carmen, Jody and Marissa
   C. Develop, Implement and Incorporate a WC Program EOP – Chris and Dan, Michele, Marissa, Connie
   D. Develop Injury Investigation Standard and Lessons Learned Method for Prevention Purposes - Leah, Chris, Nicole, and Tom

SUBCOMMITTEE & TASK FORCE REPORTS

1. Claims/Loss Control Subcommittee – Wheeler
   A. Claim Summary review –
      i. MUS
         ▪ Claims Experience and Trend Graphs
         ▪ Large Losses
         ▪ Case Study(ies) & Lessons Learned -Communication, internal and other stakeholders
      ii. Campus-specific claim summary graphs for campus review
   B. Campus News, Celebrating Successes & Lessons Learned

2. Finance Subcommittee – Roberts
   A. FY20 Budget and Preliminary FY21 Budget
   B. Premium Rate (Recommendation)
   C. $afety$mart (Recommendation)

NEW BUSINESS AND COMMITTEE ACTION

1. Strategic Plan – Adoption (ACTION)
2. WC Vision Statement – Committee direction or Action (ACTION)
   Policy 713.1 Workers’ Compensation; Workplace Safety
   Policy 713.2 Workers’ Compensation – Early Return to Work/Modified Duty
4. FY2021 Premium Rate Setting (ACTION)
5. FY2021 $afety$mart (ACTION)
6. Informational Items – Explanation & discussion of utilizing this format

INFORMATIONAL ITEMS

1. DLI Annual Application to Renew Self-Insuring Authority – Submitted February 10, 2020. Tietz will send updated Certificates of Insurance (COI) as soon as DLI approves the renewal, anticipated prior to April 1.
2. Employee Assistance Program (EAP) –MUS WC website now includes a link to the MUS EAP.
3. Excess Insurance Application process is underway – Tietz will be distributing an underwriting questionnaire to campus representatives for completion and return.
4. Campus Visits/News and Training
   A. Ergonomics visit to Education Talent Search Great Falls offices in January
   B. WC Committee Orientation packets to Collette, Morgan, Phillips, Stahl
5. Regulatory and Court developments relevant to WC Committee
   A. DLI attempting to define “prosthetic” in ARM 24.29.1407 through rule making process met with objection both at the Legislative Economic Affairs Interim Committee (EAIC) meeting and at DLI’s public hearing.
Insurers and others objected on grounds that the new definition to “augment function” is too broad and well beyond current interpretation of “prosthetic”. Objectors further contend that such a significant change is purview of Legislature, not the rule change process. EAIC unanimously approved an Informal Objection to the Rule Change at its Jan 15th, meeting – disallowing DLI’s adoption of the proposed Rule prior to the next EAIC meeting. After hearing from DLI, objectors and supporters at its Feb 13th meeting, EAIC maintained its objection, which will pend the Rule until addressed either at a future EAIC meeting or next Legislative session.

B. Tom Lopach was appointed as interim Commissioner of Department of Labor and Industry (DLI) in December 2019, replacing retiring Commissioner Galen Hollenbaugh. MUS Self-Funded Work Comp is regulated by DLI. Prior to his appointment, Tom Lopach served as Governor Bullock’s Chief of Staff.

C. LMAC (Governor’s Labor Management Advisory Committee on Work Comp)
   i. DLI WC Benefits Brochure – Current statute requires DLI to provide updated work comp benefits brochure to insurers annually and the insurer to provide to each claim filer. DLI is proposing to change 39-71-606 to require DLI, rather than the insurer, to send the brochure to each claim filer. This proposal developed from DLI’s experience automating its process to send SAW/RTW letters upon receipt of incoming FROIs. DLI expects efficiencies to be gained by auto-sending DLI Benefits brochure and SAW/RTW letter together - saving about $2k/annual and anticipating better recognition of the mailings claim-relatedness by recipients.
   ii. DLI evaluating how it collects SAW/RTW data during the Subsequent Reporting of Injury (SROI) process. Currently 4-5 questions on SROI regarding SAW/RTW cause considerable confusion. DLI is considering changing to an annual SAW/RTW reporting & clarify or eliminate those questions on the SROI. Also, if an injured worker calls DLI regarding SAW/RTW, DLI will call the insurer rather than directing the injured worker to contact the insurer.
   iii. Subsequent Injury Fund (SIF) – LMAC is questioning relevancy of the SIF, adopted by the 1973 MT legislature prior to passage of the American Disabilities Act (ADA), as a benefit for employees and incentive for employers. Under ADA employers can’t ask about certification on hire -so doesn’t help employability of disabled as the incentive is nonexistent. The employer can get benefit if a certified employee has serious injury. Plan 1 employers most likely to benefit from SIF as NCCI doesn’t discount for SIF. Campuses generally are providing the SIF information to new-hires, but new hire is responsible for follow-up, if any. Intermountain informs/assists injured MUS workers who incur potentially qualifying injury to become certified. Currently, MT paying about $1M/yr. on SIF claims. DLI is querying the 12 states that have discontinued their versions of SIF on how they wound down their SIF programs. Campuses should continue to offer SIF information to new hires until/if SIF is discontinued.
   iv. Proposed Rules Language for Joint Petition- DLI has drafted proposed legislation to waive the requirement for an insurer to copy the worker’s medical records when the insurer and worker agree to reopen medical benefits pursuant to a joint petition for reopening.
   v. At the request of Kids’ Chance of Montana, DLI provided draft Bill language to LMAC for potential support for statute change to allow DLI to provide work comp claimants or families with additional information regarding benefits – such as scholarships related to worker-injury status.

D. MT Work Comp Court
   i. Conn v. AmTrust Ins. Co. WCC2019-4673 – Insurer hires a vocational rehabilitation provider (Voc) to prepare a time of injury job analysis (TOI JA) and an alternative JA (Alt JA) with a goal to “assist in the client’s (injured worker) return to the work force...”. Ultimately, the worker could not return to her TOI job and returned briefly to a modified position but eventually left employment with her TOI employer either because the employer forced her to exceed her physical restrictions, or for unrelated health
reasons. A note in the Voc file indicated consult with AmTrust’s attorney. During Discovery process, worker’s attorney sought notes regarding that consult. AmTrust attorney claimed work product privilege. Work Product Privilege protects materials, mental impressions, conclusions, opinions and legal theories of an attorney prepared in anticipation of litigation from discovery by the adverse party. Held: Amtrust’s attorney [unintentionally] waived the work-product privilege by voluntarily disclosing his work product to the Voc. A Voc hired by insurer to prepare a Job JA in regular course of a claim is not insurer’s retained expert under Montana law; rather, a Voc provider is a non-retained, hybrid witness. Because AmTrust could not have had a reasonable expectation that its attorney’s communications to the Voc would be kept confidential, AmTrust’s attorney waived the work-product privilege.

ii. Neisinger v New Hampshire Ins. Co. WCC 2017-4143 – Worker incurs a compensable leg injury in 2015, and contends the injury aggravated his pre-existing lumbar spine condition—making treatment of his back condition also compensable under work comp. Held: Court find the back injury to be unrelated to the compensable leg injury. Court gives more weight to opinion of the IME physician because he most credibly opined, based on medical records, that petitioner’s (injured worker) symptoms developed 10 months after his industrial accident. Petitioner’s physician and chiropractor relied primarily on the petitioner’s statements that pain began at the time, or shortly after his work accident.

6. Summary on recently attended and upcoming Training/Conferences/Seminars
A. National Workers’ Compensation and Disability Conference & Expo–Las Vegas, NV Nov 6-8
B. Webinar: Work Comp Benchmark - Perspectives of Front-Line Staff (Claims Examiners & Nurse Case Mgrs.) 1,300 survey respondents. Tietz Takeaways:
   • Claim handlers report spending too much time on administrative & internal compliance issues-need administrative help.
   • Focus on role has moved from transactional to best outcomes (recovering pre-injury function & RTW).
   • 75% report needing Empathy training – employers/insurers emphasize expertise (statutes/rules) at expense of needed skills (empathy) training. Skills training requires more commitment, time.
C. SafetyFestMT (by MT DLI) – Billings Convention Center, Nov 18-21 and upcoming at Missoula College March 16-20, 2020; Miles City May 12-14 and Great Falls College August 18-20.
D. Tietz is travelling to Nashville, TN in April to attend the Kids’ Chance of America National Conference, on behalf of Kids’ Chance of Montana (KCMT).
E. CSHEMA annual conference July 10-15, Tampa, FL (early registration pricing begins in March)
F. If you have attended other training/conferences or seminars and want to share, please share under “For the Good of the Order”.

7. Upcoming WC Committee meetings are tentatively scheduled as follows:
   
<table>
<thead>
<tr>
<th>Quarter</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>4th quarter FY20</td>
<td>June 3, 2020</td>
<td>TBD Billings, Butte</td>
</tr>
<tr>
<td>1st quarter FY21-Sept 2 or 16, 2020</td>
<td>TBD Billings, Butte</td>
<td></td>
</tr>
<tr>
<td>2nd quarter FY21 – December 2 or 9, 2020</td>
<td>Conf Call/WebEx</td>
<td></td>
</tr>
<tr>
<td>3rd quarter FY21– March 3, 2021</td>
<td>Conf Call/WebEx</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Last meeting</th>
<th>Bozeman</th>
<th>Billings</th>
<th>Great Falls</th>
<th>Havre</th>
<th>Missoula</th>
<th>Butte</th>
<th>Dillon</th>
<th>Helena</th>
</tr>
</thead>
</table>

*Denotes campus with CEO that has not yet met with Committee

FOR GOOD OF THE ORDER – Any additional items prior to adjournment.